

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 894

INTRODUCER: Banking and Insurance Committee and Senator Rouson

SUBJECT: Business Services

DATE: January 15, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AP</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 894 creates the Access to Responsible Credit Pilot Program (Program). The program is intended to allow more Floridians in Broward, Miami-Dade, and Palm Beach counties to obtain responsible, small dollar consumer finance loans and to assist consumers in building their credit. Consumer finance loans are loans of money, credit, goods, and provisions of lines of credit in an amount or to a value of \$25,000. The program creates a new license type to be supervised by the Office of Financial Regulation (OFR). The program would operate under the following terms and conditions:

- A program licensee may make program loans only to residents of Broward, Miami-Dade, and Palm Beach counties.
- Program loans must be unsecured.
- A program licensee may make loans of at least \$300 and no more than \$7,500.
- A program licensee may charge a borrower an origination fee of 6 percent of the principal amount of the program loan, exclusive of the origination fee, or \$90, whichever is less.
- The borrower has the right to rescind a program loan and return the principal amount by the end of the next business day.
- The term of a program loan with a principal balance upon origination of at least \$300, but not more than \$3000, must be at least 120 days, but not more than 36 months. The term of a program loan with a principal balance upon origination of more than \$3000 must be at least 12 months, but not more than 60 months.
- Program loans may not impose a prepayment penalty.

- A program licensee must underwrite each program loan to determine the borrower's ability and willingness to repay. A program licensee must not make a program loan if the borrower's monthly debt service, including the program loan, exceeds 50 percent of the borrower's gross monthly income when borrowing less than \$3,000 and may not exceed 36 percent of the borrower's gross monthly income when borrowing more than \$3,000.
- The OFR must examine each program licensee.
- A program licensee may use access partners to perform marketing, loan servicing, and other services on behalf of the program licensee.
- At least 85 percent of loans annually issued by any program licensee must be to borrowers whose gross monthly income is less than \$6,250.

In order to participate in the program as a lender, a person must be licensed as a consumer finance lender by OFR under ch. 516 F.S.; must demonstrate financial responsibility and experience; and must not be subject to any enforcement action by a state or federal regulatory agency.

The program increases the allowable maximum interest rate for consumer finance loans by 6 percent. The maximum interest rates that may be charged through a program loan must be fixed for the duration of the loan, and are tiered based on the principal amount, as follows:

- 36 percent a year, computed on the first \$3000 of the unpaid principal balance;
- 30 percent a year on any part of the unpaid principal balance from \$3001 to \$4000; and
- 24 percent a year on that part of the unpaid principal balance from \$4001 to \$7,500.

The bill appropriates \$407,520 in nonrecurring funds from the Administrative Trust Fund to the OFR for the 2020-2021 fiscal year to support the modifications to the regulatory enforcement and licensing system (REAL).

The bill has an effective date of January 1, 2021.

II. Present Situation:

State Regulation of Consumer Lending

The Office of Financial Regulation (OFR) provides regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities. As of December 20, 2019, the Office has 38 distinct entities licensed as consumer finance companies operating at 55 locations located in Palm Beach, Broward, and Miami-Dade counties.¹

¹ Office of Financial Regulation, *Bill Analysis of SB 894*, January 10, 2020 (on file with Senate Banking and Insurance Committee).

Consumer Finance Loans

The Florida Consumer Finance Act (Act)² sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is authorized in Florida. A consumer finance loan is a loan of money, credit, goods, or choses in action, including, unless otherwise specifically indicated, provision of a line of credit, in an amount or to a value of \$25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum.³ The Act exempts licensees from the application of s. 687.03, F.S., which provides that loans with an interest rate higher than 18 percent per annum simple interest are usurious. Licenses permit approved lenders to make and collect loans in accordance with the act at a single place of business.⁴

The act expressly does not apply to any person who does business under, and as permitted by, any law of this state or the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.⁵

The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal between \$3,001 to \$4,000; and
- 18 percent a year on that part of principal between \$4,001 to \$25,000.⁶

The original principal amount of consumer finance loans must be the same as the amount financed as defined by the Federal Truth in Lending Act (TILA) and Regulation Z.⁷ Regulation Z, which implements TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.⁸ Florida law requires the APR to be calculated and disclosed as required by TILA and Regulation Z.⁹

In addition to the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:¹⁰

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;

² Chapter 516, F.S.

³ Section 516.01(2), F.S.

⁴ Section 516.01(6) and (7), F.S.

⁵ Section 516.02(4), F.S.

⁶ Section 516.031(1), F.S.

⁷ Regulation Z (12 C.F.R. part 1026, et seq.) is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. s. 1601, et seq.).

⁸ 12 C.F.R. part 1026, et seq.

⁹ Section 516.031(2), F.S.

¹⁰ Section 516.031(3), F.S.

- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A dishonored check charge of up to \$20.

Lastly, the act requires all consumer finance loans to be repayable in equal monthly installments, except for the repayment of lines of credit.¹¹

On October 11, 2019, OFR sent a survey to all 167 licensed consumer finance companies requesting statistical information concerning the licensee's volume of business for calendar years 2014 – 2018. OFR requested all licensees to respond to the survey by December 31, 2019. As of January 6, 2020, 38 licensees, or 23 percent of licensees, have responded. To allow sufficient time for additional licensees to respond, OFR has extended the deadline to respond to January 31, 2020.¹²

California Small Dollar Loan Pilot Program

Based on a business model developed by California-based Progreso Financiero (Progress Financial), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program (Pilot Program) in 2010.¹³ The pilot program applied to consumer loans of \$250-\$2,500. The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. This original pilot program met its demise due to a low lender participation rate.¹⁴

In 2015, and again in 2018, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.¹⁵ The current pilot program covers consumer loans of \$300-\$7,500, provides underwriting standards, mandatory reporting to credit bureaus, a cap on the share of gross monthly income that can be consumed by the loan payment (36 percent for loans over \$2500), a ban on credit insurance, and a ban on requiring borrowers to waive their right to sue as a condition of obtaining a loan. It also requires program licensees to reduce interest rates on loans made to borrowers who obtain subsequent loans and meet certain requirements. The current pilot program, like the original, allows the use of "finders" to connect borrowers with lenders. Finders cannot provide advice or counseling to borrowers; they can distribute lenders' marketing materials, provide information about loan terms and conditions, help borrowers with loan applications and obtain borrowers' signatures on documents, and serve other functions. Lender-paid finder fees are capped at \$65 per loan plus \$2 for each payment received by a finder. The fees are paid by lenders, cannot be based on the principal amount of loans, and cannot be

¹¹ Section 516.36, F.S.

¹² Office of Financial Regulation, *Bill Analysis of SB 894*, January 10, 2020 (on file with Senate Banking and Insurance Committee).

¹³ See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited January 13, 2020).

¹⁴ California Department of Business Oversight, *Annual Report of Activity Under the Pilot Program for Responsible Small Dollar Loans*, https://dbo.ca.gov/wp-content/uploads/sites/296/2019/07/2018-RSDL-Pilot-Program_FINAL.pdf (last visited January 13, 2020).

¹⁵ See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited January 13, 2020); *Id.*

passed on to borrowers. According to the California Senate staff analysis, the proponents view the use of finders as a means to lower costs of customer acquisition, which is the largest cost of maintaining a small dollar loan program.¹⁶

Several regulatory changes to the program became effective January 1, 2019. These changes included:

- An increase to the maximum loan amount from \$2,500 to \$7,500 and establishing a debt-to-income cap of 36 percent of the borrower's monthly income for a loan greater than \$2,500;
- Mandatory Department of Business Oversight (DBO) oversight examination at least once every 24 months,
- Authorization for DBO to charge licensees who use one or more finders an examination fee to offset the costs of examination,
- An increase in licensee reporting requirements to include specific information about the finders utilized,
- A requirement that program licensees perform reasonable background checks on finders, and
- A requirement that program licensees to reduce the interest rates on loans made to borrowers who obtain subsequent loans and meet certain requirements.

The California pilot program also requires the state's Department of Business Oversight (DBO) to post a report summarizing findings of the pilot program. The latest Annual Report of Activity under the program, published December 2019, noted the following findings from 2016-2018:¹⁷

- *Lender participation:* DBO received 14 applications from lenders to participate in the program during this time period. Eleven of those applications were eventually approved. As of 2018, a total of 16 lenders participated in the program. DBO noted that while recent changes to the program have near doubled the number of lenders and borrowers participating in the program, the revisions did not significantly impact the volume of lending activity.¹⁸
- *Finders:* In 2016, 25 finders participated in the program at 252 locations. By 2018, the number of finders more than quadrupled, rising to 109 finders participating at 616 locations.
- *Loan applications:* Borrower applications increased by 77.3 percent overall from 2016 to 2018, with loans in the \$300-\$499 range increasing most in popularity. However, the loan approval rate declined during this time period, from 52.4 percent in 2016 to 43.9 percent in 2018.
- *Interest rates:* 94.1 percent of small dollar loans carried an APR of 50 percent or more.
- *Delinquency rates:* Of the 299,542 loans made in 2018, 16.3 percent were delinquent for 7 to 29 days, 6.7 percent were delinquent for 30 to 59 days, and 5.1 percent were delinquent for 60 days or more.
- *Credit scores:* Over this time period, more than 59 percent of borrowers who took out more than one loan saw an increase in their credit score.
- *Loan term:* In 2018, of the 299,542 loans made, 52 percent had terms of 360 days or more. The ratios for other terms were from: 120 days to 179 days, 5.4 percent; 180 days to 269 days, 28.4 percent; and 270 days to 359 days, 13.5 percent.

¹⁶ *Id.*

¹⁷ California Department of Business Oversight, Annual Report of Activity Under the Pilot Program for Responsible Small Dollar Loans, https://dbo.ca.gov/wp-content/uploads/sites/296/2019/07/2018-RSDL-Pilot-Program_FINAL.pdf (last visited January 13, 2020).

¹⁸ *Id.*

- *Loan purpose:* In 2018, borrowers most frequently took out loans to pay bills (23.8 percent of loans), and to build or repair credit (23.4 percent of loans).
- *Finders:* From 2016 through 2018, the total number of applications and loans made using a finder was lower than the total of applications and loans made not using a finder. However, most short term loans (less than 180 days) were made through a finder.¹⁹

III. Effect of Proposed Changes:

The bill establishes the Access to Responsible Credit Pilot Program (Program). The program would allow consumers who are residents of Broward, Miami-Dade, or Palm Beach counties to enter into a program loan with a principal amount of at least \$300 and up to a maximum of \$7,500, at an interest rate not to exceed 36 percent per annum. Under current law, licensed consumer finance lenders may make loans in this amount at a maximum interest rate of 30 percent, with no minimum or maximum loan term. At least 85 percent of loans issued annually must be made to borrowers whose gross monthly income is less than \$6,250.

Access to Responsible Credit Pilot Program (Section 1)

Creates s. 516.405, F.S., which states that the Access to Responsible Credit Pilot Program is created within the Office of Financial Regulation (OFR) to allow more Floridians to obtain responsible consumer finance loans with principal amounts of at least \$300 but not more than \$7,500, with the express intention of assisting consumers in building their credit and providing additional consumer protections.

Definitions (Section 2)

The bill creates s. 516.41, F.S., to provide the following definitions for purposes of the pilot program:

- Access partner
- Consumer reporting agency
- Credit score
- Data furnisher
- Pilot program
- Pilot program license
- Program branch office license
- Program licensee
- Program loan
- Refinance program loan

Regulation of Program Licensees (Lenders) and Access Partners (Sections 3 and 5)

Program Licensees (Section 3)

The bill creates s. 516.42, F.S., to provide licensure requirements for persons seeking to participate in the program as lenders. Program licensees must be licensed to make consumer finance loans under ch. 516, F.S., and must already be accepted as a “data furnisher” with a

¹⁹ *Id.*

consumer-reporting agency.²⁰ Additionally, licensees must demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of ch. 516, F.S.²¹ Licensees may not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of OFR, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program. Application forms are to be adopted by rule and will be submitted digitally. Each branch office of a program licensee must be included in the application to OFR. Additional licenses are not required in order for a licensee to offer program loans through access partners or via an electronic access point through which potential borrowers may access the website of the program licensee.

OFR may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business:

- Fails to demonstrate financial responsibility, experience, character, or general fitness such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter;
- Pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication was withheld; or
- Is subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

Program licensees are subject to all other laws and rules governing consumer finance loans under ch. 516, F.S.

A program license must be renewed biennially.

The bill directs the Financial Services Commission to adopt rules to implement this section.

Access Partners (Section 5)

The bill creates s. 516.44, F.S., which allows a program licensee to engage in arrangements with access partners. Only the following entities and agents of such entities may act as access partners:

²⁰ The bill defines "consumer reporting agency" as the term is defined in the federal Fair Credit Reporting Act: "Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

²¹ Section 516.07, F.S., of the Consumer Finance Act subjects licensees to disciplinary action or denial of licensure for failure to demonstrate such actions.

- Banks, as defined in s. 658.12, F.S.
- Credit unions, as defined in s. 657.002, F.S.
- Agents, as defined in s. 626.015, F.S.
- Insurance agencies, as defined in s. 626.015, F.S.
- Tax preparation services
- Money services businesses, as defined in s. 560.103, F.S.
- Authorized vendors, as defined in s. 560.103, F.S.
- Law offices
- Investment advisors, as defined in s. 517.021, F.S.
- Financial services providers
- Public accounting firms, as defined in s. 473.302(7), F.S.

Credit service organizations and loan brokers are ineligible to act as access partners. All access partner arrangements must be in writing; must contain a provision that the access partner agrees to comply with s. 516.44, F.S., and must contain a provision allowing the OFR access to the access partner's books and records related to the access partner's operations under the agreement with the program licensee.

An access partner may engage in the following activities:

- Advertise on behalf of the program licensee;
- Provide written factual information about the program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;
- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database;
- Assemble credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee;
- Contact the program licensee to determine the status of a program loan application;
- Communicate to a borrower a response that is returned by the program licensee's automated underwriting system;
- Obtain a borrower's signature on documents prepared by the program licensee and deliver final copies of the documents to the borrower;
- Disburse program loan proceeds to a borrower;
- Receive a program loan payment from the borrower if this method of payment is acceptable to the borrower; and
- Operate an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

Any program payments received by an access partner must be applied to the program loan and be deemed received by the program licensee at the time the access partner receives the payment. When payment is made, an access partner must deliver a receipt to the borrower that includes certain information. Additionally, the bill holds a borrower harmless if an access partner fails to transmit, or is delayed in transmitting, a payment to the program licensee. An access partner must maintain records related to disbursements and payments for 2 years.

The bill prohibits an access partner from engaging in the following activities:

- Providing counseling or advice to a borrower or prospective borrower;
- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee;
- Negotiate a loan term between a program licensee and a prospective borrower;
- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to a borrower;
- Offering the borrower information of any borrower with outstanding program loans to any program licensee, unless for the purpose of assisting a borrower to obtain a refinance loan;
- Charging a borrower any fee for a program loan;
- Performing any service for a program licensee at a pawn shop; and
- Performing any service for a program licensee at a pari-mutual facility or at any facility where covered games²² are conducted.

Access partners are required to provide certain communications and disclosures to program loan applicants related to identifying information of the program licensee and access partner. The bill requires an access partner to make a good faith effort to assist the applicant in making direct contact with the program licensee in cases where an access partner is not permitted to answer questions about the loan program.

The bill allows a program licensee to compensate an access partner in accordance with a written agreement. A program licensee may not compensate an access partner in connection with a loan application unless the loan is consummated. Compensation may not exceed \$65, on average, per program loan consummated but may additionally include \$2 per payment received by the access partner on behalf of the program licensee. Any compensation paid by a program licensee to an access partner may not be charged to the borrower, either directly or indirectly.

The program licensee is responsible for any violations of ch. 516, F.S., committed by an access partner.

Rulemaking

The bill requires the OFR to draft rules implementing ss. 516.42 (relating to requirements for program participation and program license applications), 516.44 (relating to access partners), 516.45 (relating to examinations, investigations, and grounds for disciplinary action) and 516.46, F.S., (relating to annual reports filed by the program licensee and the online summarized report required of the Office). Before the rules become effective, the OFR must appear before the Financial Services Commission (“Commission”), comprised of the Governor and Cabinet, to request permission to notice the proposed rules in the Florida Administrative Register and the OFR must again appear before the Commission to request permission to file the rules for Final Adoption with the Department of State. Since the OFR must appear before the Commission at

²² Covered games are games authorized for the Seminole Tribe of Florida under the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed on April 7, 2010. *See* s. 285.710, F.S.

the beginning and end of the rulemaking process, adoption of rules may extend beyond the standard 90-day period.²³

Terms and Conditions of the Small Dollar Loans (Section 4)

The bill creates s. 516.43, F.S., which requires a program licensee to comply with certain conditions in making program loans, including the following:

Residency Requirement, Unsecured, Loan Term, Repayment Schedule, and Right of Rescission

- A program loan must be unsecured.
- For a loan with a principal amount upon origination that is at least \$300 but no more than \$3,000, a program loan must have a minimum term of 120 days and a maximum term of 36 months, for a loan with a principal balance upon origination of more than \$3,000, the minimum term is 12 months and the maximum term is 60 months.
- Program loans may not impose a prepayment penalty.
- A program loan must be repayable by the borrower in substantially equal periodic installments made every 2 weeks, semimonthly, or monthly.
- A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind and the return of the principal advanced by the end of the business day after the program loan was consummated.
- A borrower must be a resident of Broward, Miami-Dade, or Palm Beach counties.
- At least 85 percent of program loans annually issued by each program licensee must be provided to borrowers whose gross monthly income is less than \$6,250.
- A borrower may not receive a program loan exceeding \$5,000 unless the borrower previously paid in full a previous program loan, the borrower was never delinquent for more than 7 days on a previous program loan, and the borrower's credit score increased from when the borrower applied for the borrower's first consummated program loan.

Interest Rates

A program loan must apply an interest rate that must be fixed for the term of the loan and be calculated on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day. The maximum per annum interest rate assigned corresponds with the portion of the unpaid principal on the loan, as follows:

- For the portion of the principal up to and including \$3,000, the maximum annual interest rate is 36 percent.
- For the portion of the principal over \$3,000, and up to and including \$4,000, the maximum annual interest rate is 30 percent.
- For the portion of the principal over \$4,000 and up to and including \$7,500, the maximum interest rate is 24 percent.

If multiple interest rates are applied to the loan principal, the lender may charge interest at the single annual percentage rate that, if applied according to the actuarial method to each of the

²³ Office of Financial Regulation, *Bill Analysis of SB 894*, January 10, 2020 (on file with Senate Banking and Insurance Committee).

scheduled periodic balances of principal, would produce at maturity the same total of interest as would result from the application of multiple interest rates, based on the assumption that all payments are made as agreed.

The program licensee must reduce the rate on each subsequent loan to the same borrower by at least 1 percent, up to 6 percent, if all the following conditions are met:

- The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid;
- The borrower was never more than 15 days delinquent on the prior program loan; and
- The prior program loan was outstanding for at least one half of its original term before its repayment.

Prohibition against Multiple, Contemporaneous Program Loans from the Same Licensee

The bill prohibits a program licensee from inducing or permitting any person from becoming obligated to the program licensee under more than one program loan at the same time with the program licensee.

Refinancing

The bill allows the refinancing of a program loan under specified circumstances if the new loan is underwritten in accordance with the underwriting requirements created by the bill. A program licensee may refinance a program loan only if all of the following conditions are met at the time the borrower submits an application to refinance:

- The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan;
- For program loans with an original term of less than 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on the existing program loan;
- For program loans with an original term of greater than 25 months but no more than 60 months, the borrower has made current payments for at least 9 months on the program loan; and,
- The borrower is current on his or her outstanding program loan.

Consumer Disclosures and Receipts

The bill requires that a program licensee must provide the same disclosures as required in s. 516.15, F.S.²⁴ However, the bill allows the disclosures to be provided in the languages in which the loans were negotiated.

The bill requires a program licensee or approved access partner to provide the borrower an electronic or physical receipt of payment at the time the borrower makes a payment. The receipt must include the following specified information:

- The borrowers name,
- The amount paid,

²⁴ Section 516.15(1), F.S., requires a lender to deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and the date of its maturity; the nature of the security, if any, for the loan; the name and address of the borrower and of the licensee; and the rate of interest charged. However, with respect to a line of credit, the statement need not show a maturity date.

- The date of payment,
- The program loan balance before and after payment,
- The type of payment made, and
- A statement informing the borrower how to contact the lender to ask questions regarding the loan.

The program licensee must maintain an electronic record of each receipt, which must include a copy of the receipt and the date and time the receipt was made.

Fees

The bill allows a program licensee to contract for and receive an origination fee, which may not exceed 6 percent of the principal amount, exclusive of the origination fee, or \$90, whichever is less. A program licensee may not charge a borrower an origination fee more than twice in any 12 month period.

The bill caps the fee for insufficient funds at \$20, and any delinquency charge is capped at \$15 for each calendar month for payments in default for at least 10 days. In attempting to collect a delinquent payment, a program licensee or its wholly owned subsidiary must attempt to collect the payment for 30 days before selling or assigning the unpaid debt to an independent party for collection.

Credit Education

Before disbursing program proceeds to a borrower, a program licensee must direct a borrower to consumer credit counseling services promoted by the OFR or provide a credit education program or materials to the borrower at no cost to the borrower. The borrower is not required to participate in the program.

Program Loan Underwriting

A program licensee must underwrite each program loan to determine the borrower's willingness and ability to repay the program loan. A program licensee may not make a loan if it determines that a borrower's total monthly debt service payments, including the program loan and all outstanding forms of credit that can be independently verified by the program licensee:

- Exceed 50 percent of the borrower's gross monthly income when borrowing less than \$3,000; or
- Exceed 36 percent of the borrower's gross monthly income when borrowing more than \$3,000.

The program licensee is required to seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not able to be independently verified. The program licensee shall verify such information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

The program licensee is required to verify the borrower's income in determining the debt-to-income ratio using information from:

- Electronic means or services that provide reliable evidence of the borrower's actual income; or
- Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

Waiver of Borrower's Rights

The bill prohibits a program licensee from requiring a borrower to waive any right, penalty, remedy, forum, or procedure. Further, the lender may not require a borrower to agree to the application of laws other than those of Florida or require a borrower to agree to resolve disputes in a jurisdiction outside of Florida. Any waiver, other than a prohibited waiver, must be knowing, voluntary, in writing, and not expressly made as a condition of doing business with the program licensee. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable. The program licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not expressly made a condition of the contract with the borrower.

Examination of Program Licensees (Section 6)

This bill authorizes the OFR to examine program licensees, each branch office of the program licensee, and access partners. The scope of any investigation or examination of a program licensee or access partner is to be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with the program. A program licensee who violates any applicable provision of ch. 516, F.S., is subject to disciplinary action. Any such disciplinary action is subject to s. 120.60, F.S. The program licensee is also subject to disciplinary action for a violation of s. 516.44, F.S., committed by any of its access partners.

The OFR may take any of the following actions against an access partner:

- Bar the access partner from performing services under the program;
- Bar the access partner from performing services at one or more of its specific locations; and
- Impose an administrative fine of up to \$5,000 in a calendar year.²⁵

The bill authorizes the OFR to waive branch examinations if the OFR finds such examinations are unnecessary for the protection of the public due to the centralized operation of the program licensee or other factors acceptable to the OFR.

The bill provides the OFR rulemaking authority to implement the examination requirements.

²⁵ It is unclear whether the OFR has the authority to take such actions against an access partner, as access partners are not licensed by the OFR, and become subject to s. 516.44, F.S., by virtue of an agreement with the program licensee.

Reporting Requirements (Sections 4, 5, and 7)

Credit Reporting (Section 4)

The bill requires a program licensee to report a borrower's payment performance to at least two consumer-reporting agencies that compile and maintains files on consumers on a nationwide basis. In addition, as part of the credit reporting requirements, a licensee must provide the borrower with the name(s) of the credit reporting agency or agencies to which it will report the borrower's payment history.

Notice to the OFR (Section 5)

The program licensee is required to provide certain information to the OFR within 15 days after entering into a contract with an access partner. Such information includes the access partner's identifying information, and a provision that allows the OFR to request any other information. The program licensee must conduct due diligence with respect to the access partner and confirm to the OFR that the access partner has not filed a bankruptcy or reorganization petition and is not currently subject to an administrative or judicial license suspension or revocation proceeding. The program licensee must confirm to the OFR that the access partner or an affiliated party has not been convicted of a felony and is not subject to a felony indictment. Finally, the program licensee must confirm to OFR that it does not suspect that the access partner has committed a criminal act and that there has not been notification that the access partner is under criminal investigation. The access partner must report changes in this information to the program licensee.

OFR Program Report (Section 7)

A program licensee is required to file, on or before March 15 of each year beginning in year 2022, a report with the OFR in a manner prescribed by rule.

The bill directs the OFR to post a report on its website by January 1, 2023, summarizing the results of the program. The report must include the following information:

- The period covered.
- The number of applicants approved for program licensure.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.
- The number of borrowers who obtained program loans for the following purposes, based on borrower responses to:
 - Pay medical expenses.
 - Pay for vehicle repair or a vehicle purchase.

- Pay bills.
- Consolidate debt.
- Build or repair credit history.
- Pay other expenses.
- The number of borrowers who self-report that they did or did not have a bank account at the time of their loan application.

With regard to refinanced program loans, the report must include the following information:

- The number and percentage of borrowers who applied for a refinance program loan.
- Of the borrowers who applied for a refinance loan, the number and percentage of borrowers who obtained a refinance program loan.

In addition, the report must address the performance of program loans as reflected by the following information:

- The number and percentage of borrowers who experienced at least one delinquency lasting between 7 to 29 days, 30 to 59 days, and 60 days or more.
- The distribution of principal loan amounts corresponding to those delinquencies.

The bill prohibits the OFR from publishing an access partner registry in these reports.

The bill provides rulemaking authority for the OFR to implement the reporting requirements.

Access Partner Registry (Section 4)

A program licensee is required to maintain a registry of all access partners that provide services to the program licensee, and to submit a copy of the registry to the OFR along with the annual report, which must be submitted before March 15 of each year beginning in year 2022.

Section 8 provides that ss. 516.40-516.46, F.S., are subject to repeal on January 1, 2030, unless reenacted or superseded by another enacted law before that date.

Section 9 provides the act shall take effect January 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill may need a companion public records exemption bill as information gathered as part of an examination, investigation, or complaint related to a program loan would contain personal identifying and financial information about loan applicants and borrowers. Without a companion public records exemption bill this information could be subject to public inspection.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate at this time. The number of lenders, access partners, and borrowers who would participate in this pilot program is unknown at this time. The intent of the program is to provide greater access to small dollar consumer loans. The maximum annual interest rates for such loans under the bill is increased by 6 percent over the maximum interest rates currently authorized for consumer finance loans under ch. 516, F.S. The bill requires a reduction of the interest rate on subsequent loans under the pilot program of at least 1 percent up to 6 percent on subsequent loans if certain conditions are met.

C. Government Sector Impact:

Assuming a comparable number of businesses apply to become a program licensee as in California and existing consumer finance licensees also apply for a program license based on geographical constraints, the OFR estimates that it would need one full-time equivalent position to handle the additional regulatory duties and responsibilities proposed in this bill.

The OFR estimates a fiscal impact for salaries and benefits for one full-time equivalent position is as follows:

- Total recurring costs of \$65,266.32.
- Total non-recurring costs of \$10,000.00.

The OFR would also incur insignificant costs associated with rulemaking which can be absorbed within its current budget.²⁶

Non-recurring costs of \$407,520 would be appropriated from the Administrative Trust Fund to cover the technological impact to the OFR, as the bill will require configuration

²⁶ Office of Financial Regulation, *Bill Analysis of SB 894*, January 10, 2020 (on file with Senate Banking and Insurance Committee).

and other updates to the Office's Regulatory Enforcement and Licensing (REAL) system internal system and website including the creation of electronic forms for applications and reporting.²⁷

VI. Technical Deficiencies:

VII. None.Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.405, 516.41, 516.42, 516.43, 516.44, 516.45, and 516.46.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 15, 2020:

The CS makes technical changes to remove “a national bank as defined by s. 658.12, F.S.,” from the definition of access partner, as the definition of “access partner” also includes a bank, as defined in s. 658.12, F.S. As defined in statute, the term “bank” includes a national bank. s. 658.12(2), F.S.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁷ *Id.*